

to have been fully complied with. . . Any exterior addition to or change or alteration made without application having first been made and approval obtained as provided above shall be deemed to be in violation of this covenant and the addition, change or alteration may be required to be restored to the original condition at the Owner's cost and expense.

4. Section 6.04 of the Declaration (Covenant Committee Rules and Regulations; Appeals of Covenant Committee Decision) states in relevant part:

The Covenant Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans to be submitted for approval and may publish such statement of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details or other matters, as it may consider necessary or appropriate.

5. The Complainant admitted (and the Respondent did not object) that, at the time of the incident giving rise to this complaint, it had established a Covenant Committee (renamed at an unspecified date as the Architectural Control Committee, hereinafter ACC) and that the ACC had issued General Policy Guidelines (date unspecified).

6. The General Policy Guidelines issued on an unspecified date by the ACC (Complainant's Exhibit 1) states that the ACC:

will meet monthly and act within thirty days from receipt by the ACC on each Request for Review (emphasis added).

7. The General Policy Guidelines also contained a sample copy of the Request for Review, the form to be submitted by a homeowner to request approval of a planned improvement or alteration to his/her property.

8. The General Policy guidelines, as well, clarified the action to be taken if a homeowner altered or improved her/his property before requesting and receiving approval from the ACC: "These requests *should* be submitted and approved prior to the start of work on the proposed improvement or alteration. *However, requests submitted 'after the fact' will be given consideration, but the homeowner runs the risk of obtaining disapproval after a expenditure has been made [for the alteration or improvement] (emphasis added).*"

9. The Request for Review form notifies the homeowner submitting the request and requesting approval for a planned improvement or alteration, that: "*You will be notified in writing of the Committee's decision within 60 days of receipt by the Committee (emphasis added).*"

10. The then chairperson of the ACC, Mr. Mark Gruneth, testified that the ACC accepted the date that the homeowner noted on the Request for Review as constituting the date of receipt by the Committee. The investigative file contains the Request for Review, dated April 6, 1995, submitted to the Complainant by the Respondent, requesting that the ACC approve the changing of the paint of her ". . . front door to red. (It's woodland now) [sic]."

11. The next day, the Respondent submitted another Request for Review, dated April 7, 1995, requesting approval to install a fence in the back yard of her property.

12. Both Requests for Review sent to the ACC by the Respondent are date stamped as being received on April 14, 1995, or eight or nine days from the dates of April 6 and April 7, 1995, respectively, when the Respondent's Requests are dated.

13. The Respondent admitted erecting the fence on her property on June 8, 1995 and maintaining it there

before her receipt of the ACC's decision, dated June 9, 1995. While admitting that she repainted the front door of her house the color red from "Woodland," before receiving the ACC's disapproval letter, dated June 9, 1995, neither she nor the Complainant agreed on the exact date when the repainting occurred.

14. Jeff R. Wolff, Agent for Potomac Grove Homeowners Association, employed by The Management Group Association, Inc., a full service professional property management company, sent the Respondent two (2) letters, each dated June 9, 1995, one in which he clearly informed the Respondent that the ACC had disapproved her request to erect a fence, without certain modifications, on her property.

15. The second June 9, 1995 letter, sent to the Respondent by the Agent, contains the identical opening sentence as the other June 9, 1995, letter:

I am writing on behalf of the Architectural Control Committee of the Potomac Grove Homeowners Association to inform you that your request for adding a fence (emphasis added) has been disapproved with the following comment:

16. This second letter then goes on to notify the Respondent:

For some time the ACC has implemented a policy that prohibits changes from the assigned colors for the townhouses and the condominiums. This policy has been undertaken in an effort to maintain the uniform presentation of the townhouses and the condominiums as well as being fair to the various owners.

Since the door has apparently already been painted, you are hereby informed that the door must be repainted to match the color shown on the color schedule.

17. In testimony at the hearing, it was offered by the Complainant that the first paragraph of this second June 9, 1995 letter, sent to the Respondent, repeated the first paragraph of the previously mentioned June 9, 1995, letter, in error.

18. The Complainant's attorney sent The Management Group a letter, dated June 20, 1995, in which she stated that the Respondent received both of the letters, dated June 9, 1995, from the mentioned group on June 20, 1995. The Respondent also testified to this fact. Neither other testimony nor documents challenged or controverted the date the Respondent allegedly received the ACC's decisions.

19. The letters mentioned here sent by the respective parties, via regular U. S. mail service, neither required the signature of nor the date of receipt by the receiving person.

CONCLUSIONS OF LAW

Based on a preponderance of the evidence, and after full and fair consideration of the evidence of record, the Commission concludes that:

1. The threshold legal standard for reviewing decisions rendered by the Association, as set forth in Kirkley v. Seipelt, 212 Md. 127 (1957), is a reasonableness test. This test determines whether the covenant under which the Association denied approval to the Respondent's requests was valid and whether, if valid, the covenant was applied according to the authority granted to the Association.

2. While we find that the covenant itself was valid, we, nevertheless, find that the Association exceeded its authority in disapproving the alteration and improvement requested by the Respondent.

3. Resting on the language in Section 6.01, to the effect that a "change or alteration without application

having been made and approval obtained. . . shall be deemed to be in violation. . . and the change or alteration may be required to be restored to the original condition at the Owner's cost and expense," the Association believes that it has authority under this provision to order Respondent to remove the fence and to repaint the door. We find that this provision was further clarified within the General Policy Guidelines issued to implement the duties of the ACC under Section 6.01 and Section 6.04.

4. Within the Guidelines, the homeowner is informed that requests submitted "after the fact" or after the change or alteration has been completed, "will be given consideration, but the homeowner runs the risk of obtaining disapproval after the expenditure has been made." This language clearly informs homeowners (1) that she/he can make property changes or alterations prior to approval by the ACC or the Association and (2) that, by doing so, she/he runs the risk that the changes or alterations might be later disapproved by the ACC.

5. Thus, the Guidelines make clear that the making of changes or alterations prior to the approval of the ACC was not a per se violation of the covenant, warranting the Association's order to the Respondent to remove or modify the fence and to repaint the front door.

6. Section 6.04 of the Covenant authorized the ACC to ". . . adopt and promulgate such rules. . . regarding the form and content of plans to be submitted for approval. . ." At an unspecified date, the ACC did adopt and later issue to the Potomac Grove Association's homeowners its General Policy Guidelines. The Guidelines outlined the required procedures to be followed by homeowners for applying for approval of alterations and improvements to their property, as well as policies and procedures to be followed by the ACC in deciding such requests.

7. The Guidelines, offered in evidence by the Complainant, inter alia, advised homeowners that they could make changes and alterations to their property before obtaining approval from the ACC. However, in making the alteration or improvement prior to requesting and receiving approval from the ACC, they run "the risk of obtaining disapproval" from the ACC and of being required to remove or change the alteration or improvement at the homeowners' expense.

8. Further, the Guidelines advised the homeowners that "[t]hey will be notified in writing of the Committee's decision [to approve or disapprove their requests for any alteration or improvement] within 60 days of receipt by the Committee."

9. The Respondent submitted her Requests for Approval to the ACC, on April 6 and April 7, 1995, respectively. The then chairperson of the ACC testified that the dates shown on the homeowners' requests commenced the 60 day period for approval or disapproval of the requests by the ACC.

10. Therefore, the ACC's action on the Respondent's requests should have been sent to her by June 5 and June 6, 1995, respectively, to be timely, within the authorized 60 day period for informing the Respondent of the ACC's decisions.

11. Here, the record shows the ACC allegedly met and disapproved the Respondent's requests on May 26, 1995, well within the 60 day period for deciding such matters. No evidence presented showed that the Respondent was present at the meeting or privy to the ACC's decision at the time.

12. Rather, the record includes documents showing that the ACC sent its decision to the management agent, not to the Respondent, on that date. After receipt, the management agent informed, in writing, the Respondent of the ACC's decision, in letters, dated June 9, 1995.

13. Not until the Respondent received the management agent's letters on June 15, 1995, did she learn what action had been taken by the ACC regarding her requests. (Arguably, the jumbled second June 9th letter sent to the Respondent, notifying her of the disapproval of the requested fence but

merely informing her, in the same letter, that her door had to be repainted, could be considered an improper notification of the ACC's decision on the door. Because we find for the Respondent on another ground, we do not enter judgment for her on this matter.)

14. As mentioned, the Guidelines required the ACC to inform the Respondent, in writing, of its actions on her requests within the 60 day period from the date of her requests. Here, the evidence clearly shows that the ACC informed the management agent, not the Respondent, of its decisions within the required period. As the record shows, the management agent sent letters, informing the Respondent of the ACC's decisions, on June 9, 1995, or beyond the authorized period.

15. To be timely, the letters sent to the Respondent, informing her of the ACC's decisions, ought to have been sent by June 5 and June 6, 1995, respectively.

16. Therefore, we must find that the Association exceeded its authority, when it notified the Respondent of the ACC's disapproval of her requests beyond the 60 day notification period.

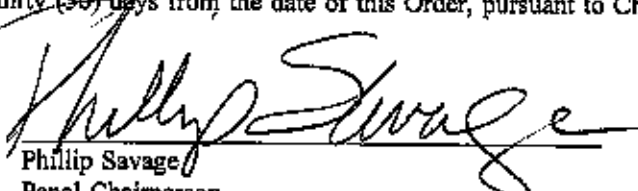
17. In conclusion, we find, for the reasons stated here, that the Association failed to timely disapprove the Respondent's requests for the erecting of a fence on her property and for the repainting of her front door, as required by the authority granted to it within its Covenant and the Guidelines issued pursuant to the Covenant.

ORDER

Based on the evidence contained in the record, and for the reasons set forth here, the Commission orders that this complaint be dismissed, in that the preponderance of evidence concluded that the Association failed to timely act on the Respondent's request, as required by its Covenant and the Guidelines issued pursuant to the Covenant.

The foregoing was concurred in by panel members Price, Burstyn, and Savage.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.


Philip Savage
Panel Chairperson
Commission on Common Ownership Communities